7 June 2013

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: corporations.joint@aph.gov.au

Dear Sir/ Madam

A regulatory framework for tax (financial) advice services (previously Tax Laws Amendment (2013 Measures No. 2) Bill 2013, Schedules 3 and 4)

The accounting profession supports the passage of a regulatory framework for tax (financial) advice services (previously Tax Laws Amendment (2013 Measures No. 2) Bill 2013, Schedules 3 and 4) in the life of this Parliament. We believe that such a framework:

- builds a sound regulatory environment that further protects consumers of tax advisory services
- will help to lift the standards of financial advisers offering tax advice
- creates a fair and consistent approach to the regulation of tax advisory services, which will help to support the integrity of the tax system, and
- will assist in bolstering the public's confidence in financial advisory services.

The development of a new regulatory environment for tax advice has been in development for more than 20 years, culminating in the passage of the Tax Agent Services Act 2009 (the Act). The history of the Act and its importance has been supported by both sides of politics, going back as far as April 1998 when the then Assistant Treasurer stated 'The proposed legislative changes are designed to create an improved environment for tax agent services…' and '…It will enable taxpayers to have greater confidence that they are dealing with a tax agent who has and maintains high professional standards.'

There has been concerted discussion, consultation and drafting of this particular element of the Act over the last three years. The consultation period commenced in November 2010 with the release of an options paper 'Regulation of tax agent services provided by financial planners', followed by regular stakeholder consultation in the ensuing period with additional papers on the framework and draft legislation released for discussion. This process has been consistent with the implementation of other categories under the Act.

It is important to note that the proposed new framework will have an 18 month transition period. This transition period will allow financial services licensees (or authorised representatives) currently not registered under the Act to continue to provide services as they do today for a period of up to 18 months.

During this 18 month period, financial advisers will be able to continue to operate under the current unregulated arrangements and not be subject to the civil penalty regime of the Act as long as they include a disclaimer with their advice

This transitional safeguard is essentially the same as the existing exemption for financial advisers which is contained in the Tax Agent Services Regulations 2009. During the notification period, financial planners that are not registered under the Act will continue to be exempt from the requirements of the Tax Practitioners Board's Code of Conduct and professional indemnity insurance requirements as long as they provide the required disclaimer for their tax (financial) advice services. It is important to note that the proposed extension of the Act to financial planners has been deferred on three separate occasions. It was originally planned to commence from 1 March 2011.

We believe that a sound regulatory environment instils confidence for both consumers of tax services, as well as for financial planners. A key principle and objective of the Government's Future of Financial Advice (FoFA) reforms is to increase the trust and confidence in the financial services industry. The appropriate regulatory tax framework is a vital component for delivering this objective.

The provision of tax advice is a highly specialised service which requires a high level of skill, knowledge and experience. Consumers of tax advisory services deserve to have the comfort of knowing that those providing them with advice are appropriately registered, qualified, monitored and regulated by an oversight body, and that consumer protection measures exist to safeguard their interests.

CPA Australia and the Institute of Chartered Accountants Australia support the passage of a regulatory framework for tax (financial) advice services. We believe that consumers deserve to receive tax advice from financial planners safe in the knowledge that it is provided within the boundaries of a strong regulatory framework that upholds the highest level of competence and professionalism.

We intend to provide a further supplementary submission by Friday to provide some additional details on the issues we have raised.

If you would like us to provide any further information, please do not hesitate to contact either: Paul Drum (CPA Australia) on or via email: ; or Yasser El-Ansary (the Institute) on or via email:

Yours sincerely

Alex Malley
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Lee White
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Detailed comments in response to the terms of reference

1. Definition and application – tax (financial) advice service

CPA Australia and the Institute support the principles based definition of tax (financial) advice service. The definition follows extensive consultation with the industry and delineates the services that a registered tax (financial) adviser will be able to provide.

The definition must be considered within the broader scope of the Act, including The Code of Professional Conduct (Code) which provides a principles based framework that regulates the personal and professional conduct of those providing services regulated under the Act. Two important elements of this framework are independence and competence.

Independence requires the individual to act in the best interests of the client. It also requires adequate arrangements are in place for the management of conflicts of interest that may arise.

Competence requires the individual to ensure that tax agents services provided on their client's behalf are done so competently and that the individual maintain the knowledge and skills relevant to the tax advisory services provided. It also requires the exercise of reasonable care in ascertaining a client's state of affairs and to ensure that taxation laws are applied correctly to the circumstances in which the advice is being provided.

Together, with the specific exclusion of some activities in the definition of tax (financial) advice service, these elements will ensure that a registered tax (financial) adviser acts within the best interest of the client and is importantly, competent to provide the service.

Importantly these requirements are consistent and compatible with the overarching objectives of the FoFA reforms and in particular, the best interests duty, which also requires the provider must act in the best interests of the client and that the provider has the expertise required to provide the client with advice on the subject matter sought.

2. Interplay of the Tax Agent Services Regime with the Future of Financial Advice reforms

We believe that a sound regulatory environment instils confidence for both consumers of tax services, as well as for advisors. A key principle and objective of the Government's FoFA reforms is to increase the trust and confidence in the financial services industry. The appropriate regulatory tax framework is a vital component for delivering this objective.

Further, it is not unusual for an industry to be regulated under two or more separate regimes and it is expected that in such cases issues will be identified that will need to be resolved for successful implementation. While some stakeholders have expressed concern over interaction between the Tax Agent Services Regime and the FoFA reforms, we believe the issues identified can be appropriately addressed.

This belief is supported by the fact in May 2013, ASIC met with industry representatives and stated it was confident both the *Corporations Act 2001* (as amended by FoFA) and the Act are consistent and a financial adviser would be able to comply with both.

ASIC also confirmed a licensed financial planner could satisfy the requirements of the best interests duty, including the safe harbour provisions (including s961B(2)(d)), even if the individual is not a registered tax (financial) adviser but rather operates under the 'sufficient numbers' model.

Existing regulatory guidance will be amended by ASIC to confirm this once the legislation implementing the regulatory framework is passed.

We understand there has been significant discussion and engagement between ASIC, TPB and Treasury through this consultation process. We believe the Committee should be confident that ASIC and the Tax Practitioners Board (the Board) will be able to appropriately address any issues raised, as evidenced by the proactive steps they are already taking to address such issues.

Concerns have also been raised over how the industry will implement the 'sufficient numbers' provision, being the requirement to have a sufficient number of individuals who are registered to provide tax agent services to a competent standard and to carry out supervisory arrangements (for companies and partnerships). More

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specifically, there is a belief that the Board should issue guidance around what they consider is 'sufficient' for the financial services industry.

However, the guidance currently provided by the Board which requires a practice to make this determination themselves based on their relevant circumstances is similar to the current guidance ASIC has issued for a number of obligations that must be met by licensees. ASIC state in such circumstances 'the nature, scale and complexity of your business' will determine what steps must be taken. This aligns with the Board's guidance that includes such factors as the size of the business, the services being offered and the number of qualified and experienced staff.

3. Transition – existing and new advice providers

We believe that the proposed transitional arrangements are generous and are consistent with the implementation of the regime for registered tax agents and BAS agents, where at the time the legislation was passed there were also a number of issues yet to be finalised, including that the Board had not been formed.

3.1 Notification period

A licensed financial planner can register as a registered tax (financial) adviser simply by 'notifying' the Board within the first 18 months of the transition period, which we believe provides more than adequate time to notify.

During this 18 month notification period, the financial planner that registers under the Act does not need to satisfy any academic or experience requirements upon registration. However, they will need to comply with the general obligations of the Act, including the Code, Professional Indemnity insurance requirements, and the Continuing Professional Education (CPE) requirements.

The earlier a financial planner notifies the Board, the longer their initial registration period will be. For example, if they notify the Board in July 2013 their registration will not expire until 31 January 2017. While this provides an incentive to notify early, there is no penalty if a financial planner elects not to notify the Board and enter the regulatory regime during the first 18 months.

During the first 18 months, if a financial planner does not notify the Board, they can continue providing tax (financial) advice services as long as they provide the client a disclaimer advising that:

- they are not a registered tax (financial) adviser under the Act; and
- if the recipient intends to rely on the advice, then they should request advice from a registered tax (financial) adviser or a registered tax agent.

Importantly, they will not be in breach of the civil penalty provision for providing tax (financial) advice services while unregistered. This is a new transitional safeguard and replicates the existing exemption for financial planners [Schedule 3, item 48, sub-item (4); Explanatory Memorandum 3.148, p. 111].

This measure enables a financial planner to choose deferring registration for a further 18 months, which some have argued is necessary, if they choose to do so. We believe many financial planners may choose this option and by doing so, they will not be required to meet the other obligations of registration identified above.

This provides a generous period and added flexibility for a financial planner who may be impacted by this reform.

3.2 Transition period

A further 18 month transitional period will commence 1 January 2015, following the notification period.

A financial planner who registers during the transitional period, for example 1 January 2015, will be entitled to an initial registration period of three years without being required to meet any academic requirements. Rather, they will need to demonstrate 'sufficient experience' to provide their services to a 'competent standard'.

We believe this measure provides a practical pathway to assist financial planners transition into the TASA regime.

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3.3 New advice providers

The following examples demonstrate how a new advice provider will be able to transition into the TASA regime, which replicates a similar three phase approach for the implementation of Act for registered tax agents and BAS agents.

Example 1 – Brand new financial adviser registering during the notification period (1/7/13-31/12/14)

- A financial planner new to the financial planning industry can register with the Board during the notification period.
- They will not be required to meet any academic or experience requirements.
- The earlier the new financial planner notifies the Board, they longer their initial registration period will be.

Example 2 – Brand new financial planner registering during the transition period (1/1/15-30/6/16)

- A new financial planner will be required to operate under a 'supervisor' framework to gain the required experience before registration.
- They can then register during the transitional period and will not be required to meet any academic requirements.
- They would be required to show 'sufficient experience' to be able to provide tax (financial) advice services to a competent standard.
- Upon registration, they would be granted a minimum of three years registration, which will not need to be renewed until at least January 2018.

Example 3 – Brand new financial planner registering from 1 July 2016

- A financial planner will need to register under the standard requirements, being a combination of education and experience which are yet to be finalised.
- This will require a new financial planner to gain 'relevant experience', this is an important element providing an additional consumer protection mechanism.
- Previously proposed pathways released for consultation by Treasury in February of this year require between 1 and 3 years' relevant experience, depending on the accompanying education qualifications, where relevant experience is broadly defined and includes 'other experience approved by the Board', not necessarily even gained under supervision.
- A minimum period of three years registration period would then be granted.

While concern has been raised how a financial planner new to the industry would meet the requirements for registration, the reality is that the individual would in the first instance be working under another entity's Australian Financial Services Licence (AFSL). It would be assumed that at least one individual within the licensee would be a registered tax (financial) adviser. The new entrant would be able to work under the supervision/mentoring of the registered tax (financial) adviser in order to gain the relevant experience for the purposes of their registration.

This model is already in place under the Act and is an important consumer protection mechanism to ensure that only appropriately education and experienced individuals are registered to provide tax services to consumers.

3.4 Academic requirements

As a result of the transitional rules, financial planners will be provided with more than adequate time to complete their required academic qualifications before they will need to renew their initial registration.

For example, a financial planner who notifies the Board within the first 18 months will not be required to satisfy the academic qualifications for registration until they renew their registration. This would fall between 31 July 2016 and 1 January 2017.

A financial planner who registers during the transitional period will not be required to satisfy any academic requirements until they renew their registration, which would be no earlier than 1 January 2018.

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